



Bureau of Industry and Security



Determining License Requirements based on ECCN and Destination

Sheila Quarterman
Export Policy Analyst
Regulatory Policy Division

Overview of the Export Administration Regulations

Classification of Items on the Commerce Control List

Determining License Requirements Based on ECCN and Destination

Determining Other Licensing Requirements



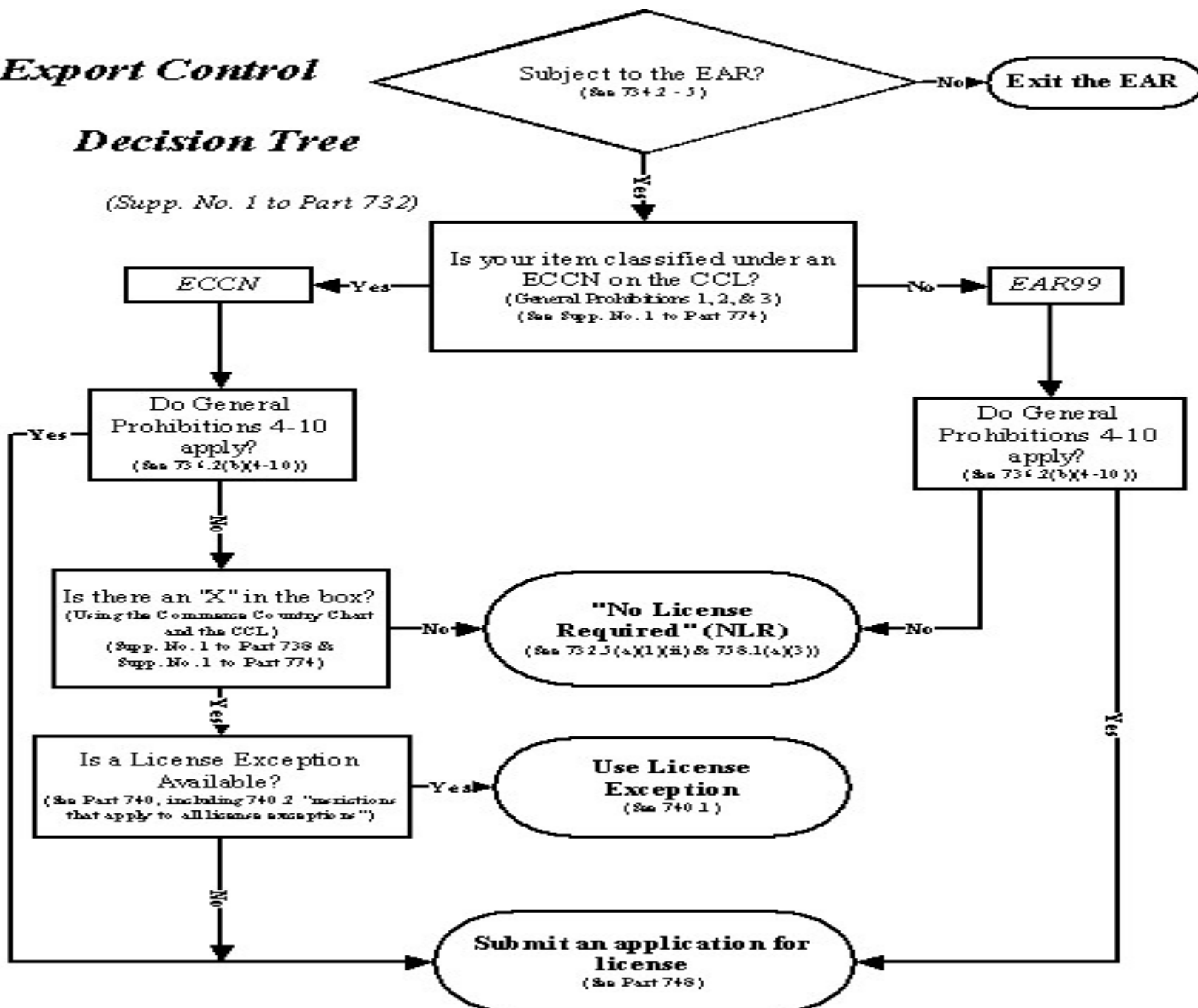
Topics of Discussion

- General Prohibitions 1-3
- Using the Reasons for Control and the Commerce Country Chart
- No License Required ("NLR")

Export Control

Decision Tree

(Supp. No. 1 to Part 732)





General Prohibitions 1-3

Part 736

- You may **not** without a License or License Exception:
 - No. 1: Export or reexport controlled items to listed countries.
 - No. 2: Reexport foreign-made items incorporating more than de minimis amount of controlled U.S. content
 - No. 3: Reexport foreign produced direct product of U.S. technology or software (D:1 and Cuba)



Commerce Country Chart

Part 738, Supplement No. 1

- Reasons for Control/Country Chart
- If there is:
 - “X” in the box indicates a license requirement
 - No “X” in the box indicates no license requirement



Structure Commerce Country Chart

When the Destination and the Reason for Control Meet, Ask Yourself...

Is there an "X" in the box?

Commerce Control List Overview and the Country Chart

Supplement No. 1 to Part 738—page 1

Commerce Country Chart

Reason for Control

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti-Terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Arghanistan	X	X	X	X		X	X	X	X	X		X		X		
Albania	X	X		X		X	X	X	X	X		X	X			
Algeria	X	X		X		X	X	X	X	X		X		X		
Andorra	X	X		X		X	X	X	X	X		X		X		
Angola	X	X		X		X	X	X	X	X		X		X		
Antigua & Barbuda	X	X		X		X	X	X	X	X	X	X		X		
Argentina	X					X	X	X	X	X	X	X		X		
Armenia	X	X	X	X		X	X	X	X	X		X	X			
Aruba	X	X		X		X	X	X	X	X		X		X		
Australia	X					X		X	X							
Austria	X					X		X	X	X		X		X		
Azerbaijan	X	X	X	X		X	X	X	X	X		X	X			
Bahamas, The	X	X		X		X	X	X	X	X	X	X		X		
Bahrain	X	X	X	X		X	X	X	X	X		X		X		



No License Required ("NLR")

- You may use **NLR** for:
 - EAR99 items, or
 - ECCNs where there is no "X" on the Country Chart under reason(s) for control; **and**
 - *When* the transaction does not require an export license based on any other licensing requirement (e.g., end-use/user requirements)



Determining Licensing Requirements based on ECCN & Destination: Summary

- "X" in the box indicates a license requirement
- No "X" in the box indicates no license requirement



Classification Exercise

- For the items you have classified, review the Country Chart column indicators
- Cross reference with the Country Chart to determine license requirements for:
 - Germany
 - Brazil
 - Libya
 - Syria



Bureau of Industry and Security



Determining Other Licensing Requirements: *End-use/End-users, Parties to the Transaction, Activities and Prohibited Destinations*

Sheila Quarterman
Export Policy Analyst
Regulatory Policy Division

Overview of the Export Administration Regulations	Classification of Items on the Commerce Control List	Determining License Requirements Based on ECCN and Destination	Determining Other Licensing Requirements
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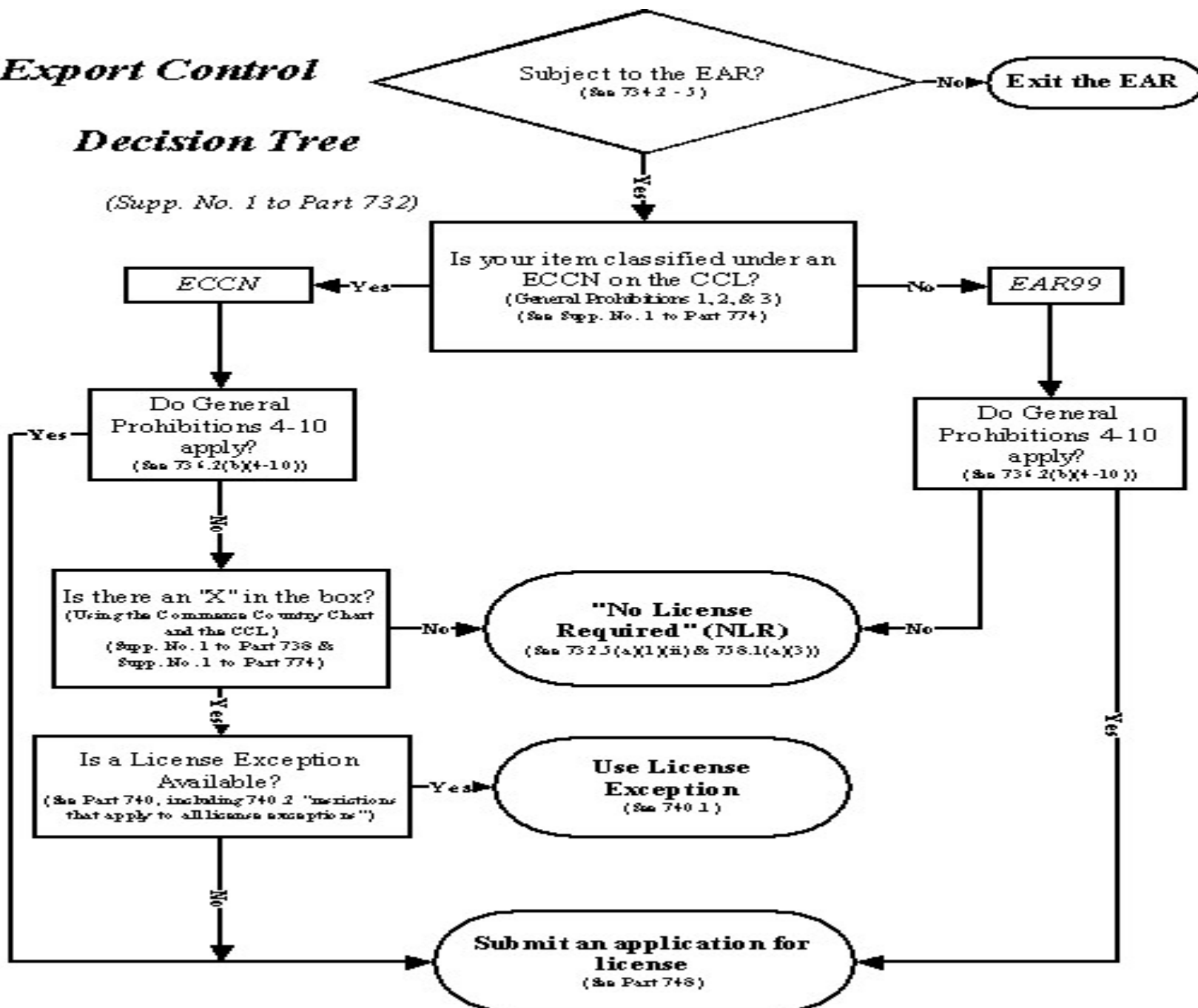
Topics of Discussion

- General Prohibitions 4-10
- Prohibited exports based on knowledge about the transaction
 - End-use/end-user, parties to the transaction, activities
- Screening parties involved in the transaction
- Prohibited exports to destinations under embargo or with special controls
- Other Prohibitions

Export Control

Decision Tree

(Supp. No. 1 to Part 732)





General Prohibitions 4-10

§736.2(b)

4. Denial Orders
5. Knowledge of end-use and end-user controls
6. Embargoed Countries
7. U.S. person support of proliferation
8. Transit through certain countries
9. Terms or conditions of licenses, etc.
10. Knowledge of a violation



Why are these considerations important?

- Awareness of other licensing requirements is important because:
 - Go beyond Commerce Control List licensing requirements
 - affect ALL items subject to the EAR.
 - Are a critical factor in analyzing and making licensing decisions
 - Are part of internal control screening process to prevent violations
 - Some controls are specifically based on information that is “known” to the exporter/reexporter or other relevant actor



What do we mean by “knowledge”?

Part 772

- Includes:
 - “Positive” knowledge that a circumstance exists or is substantially certain to occur
 - An awareness of a high probability of its existence or future occurrence

Know = reason to know = reason to believe



License Requirement due to...

End-user/End-use Controls

Part 744

- Prohibits exports, reexports and transfers in-country of items for various reasons
 - Nuclear end-uses
 - unmanned vehicles
 - Chemical and biological weapons uses
- If you “know” or are “informed”
- “Knowledge” is defined in Part 772
- Entity List, Supplement No. 4 to Part 744



What are the Nonproliferation Control Policies?

Part 744

- Certain nuclear end-uses (§744.2)
 - i.e., nuclear explosive activities, unsafeguarded facilities, nuclear fuel activities
- Design, development production or use of certain rocket system or unmanned air vehicle (§744.3)
- Design, development, production, stockpiling or use of chemical or biological weapons, in or by any country or destination, worldwide (§744.4)

General Prohibition 5



Other End-use Control Policies?

- Maritime nuclear propulsion – (§744.5)
- Certain foreign aircraft or vessels – (§744.7)
- Military end-use to the PRC (§744.21)
- Microprocessors to Military Users and Uses
– Country Group D:1 (§744.17)

General Prohibition 5



License Requirement due to... Support of Proliferation Activities

- U.S. person may **not** support an export, reexport or transfer in-country related to a proliferation activity
 - Includes items that are not subject to the EAR
 - U.S. and Foreign-origin items
 - Support includes financing, transportation or forwarding
- Performance of contract, service or employment

General Prohibition 7



A “US Person” includes...

Part 744

- Any person in the United States
- U.S. citizens, permanent resident aliens, or protected individuals wherever located
- U.S. organized firms and their foreign branches



Make Sure to Check the Parties to the Transaction!

Lists to Check

- *Denied Persons*
- *Entity List*
- *Unverified List*
- OFAC Lists
- Nonproliferation Sanctions
- Debarred List

➤ Changes are published in the Federal Register when issued.

Available at:
www.bis.doc.gov



Who are Denied Persons?

- Parties denied export privileges under a denial order
- Most covered under a Standard Denial Order, but some have other terms
 - You can not violate the terms of a denial order
- To be informed of changes, subscribe to:
BIS Email Notification Service



What is the Entity List?

Part 744, Supplement 4

- Foreign persons for which there are concerns regarding
 - proliferation of weapons of mass destruction
 - acting contrary to the national security or foreign policy interests of the United States
- May require license for all items subject to EAR – requirements vary
- To be informed of changes, subscribe to:
BIS Email Notification Service

Supplement No. 4 to Part 744 - ENTITY LIST

This Supplement lists certain entities subject to license requirements for specified items under this part 744 of the EAR. License requirements for these entities include exports, reexports, and transfers (in-country) unless otherwise stated. This list of entities is revised and updated on a periodic basis in this Supplement by adding new or amended notifications and deleting notifications no longer in effect.

COUNTRY	ENTITY	LICENSE REQUIREMENT	LICENSE REVIEW POLICY	FEDERAL REGISTER CITATION
CANADA	Ali Bakhshien, 909-4005 Bayview Ave., Toronto, Canada M2M 3Z9.	For all items subject to the EAR. (See §744.11 of the EAR).	Presumption of denial.	73 FR 54504, 9/22/08.
	Kitro Corporation, 909-4005 Bayview Ave., Toronto, Canada M2M 3Z9.	For all items subject to the EAR. (See §744.11 of the EAR).	Presumption of denial.	73 FR 54504, 9/22/08.
CHINA, PEOPLE'S REPUBLIC OF	13 Institute, China Academy of Launch Vehicle Technology, (CALT), a.k.a. 713 Institute or Beijing Institute of Control Devices.	For all items subject to the EAR.	See §744.3(d) of this part.	66 FR 24265, 5/14/01.
	33 Institute, a.k.a. Beijing Institute of Automatic Control Equipment.	For all items subject to the EAR having a classification other than EAR99 or a classification where the third through fifth digits of the ECCN are "999", e.g.,	See §744.3(d) of this part.	66 FR 24266, 5/14/01.



What is the Unverified List?

- Foreign parties to transactions, where post-shipment verifications or pre-license checks could not be conducted
- Raises “Red Flag” -- Supplement 3 to Part 732
- To be informed of changes, subscribe to: BIS Email Notification Service



What are Red Flags?

Part 732, Supplement 3

- Possible indicators that an unlawful diversion might be planned by the customer
- Abnormal or suspicious circumstances
 - Product capabilities do not fit buyer's business
 - Buyer evasive about destination or use
 - Routine on-site service is declined



“Know Your Customer” Guidance

Part 732, Supplement 3

- Decide whether there are “red flags”
- If there are “red flags” – inquire
- Do not “self blind”
- Reevaluate transaction
- Absent “red flags” or special EAR provision, there is no affirmative duty to “go behind” customer’s representations



License Requirement due to... a Country Sanction under the EAR

- **Comprehensive Embargo**
 - Iran – §746.7 & §742.8
 - Cuba – §746.2
 - Sudan – §742.10
- **Sanctioned**
 - Syria – §746.9 & Supp. No. 1 to part 736
 - N. Korea – §746.4 & §742.19
- **UN Arms Embargo**
 - Rwanda – §746.8
 - Iraq – §746.3

General Prohibition 6



Where to go for...

Cuba	
Exports and reexports to Cuba	BIS
Financial transactions and personal travel to Cuba	OFAC
Iran	
Exports of CCL and EAR99 items to Iran	OFAC
Reexports of CCL items to Iran	OFAC
Reexports of EAR99 items to Iran by U.S. Person	OFAC
Reexports of EAR99 items to Iran by non-U.S. persons	BIS
Sudan	
Exports and reexports of CCL items to Sudan	OFAC & BIS
Exports and reexports of EAR99 items to Sudan for most end-uses and end-users	OFAC
Exports and reexports of EAR99 items to Part 744 end-uses and end-users in Sudan	BIS & OFAC
Syria	
Exports and reexports to Syria	BIS
North Korea	
Exports and reexports to North Korea	BIS



Other Prohibitions

- Some In-Transit Shipments
- Violation of orders, terms, and conditions
- Acting with knowledge that a violation of the EAR will occur (or has occurred)



Some In-Transit Shipments are prohibited

- In transit shipment and items to be unladed from vessels or aircraft
- No export, reexport, transit through Armenia, Azerbaijan, Belarus, Cambodia, Cuba, Georgia, Kazakhstan, Kyrgyzstan, Laos, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam
 - Unless such export (reexport) is eligible to such country of transit without a license or with a license exception.

**Extra
Attention
Forwarders!**

General Prohibition 8



Orders, Terms, and Conditions

- May not violate:
 - Terms or conditions of a license or license exception
 - Any order under the EAR
 - Supplement No. 1 & 2 to Part 736 contain certain General and Administrative Orders

General Prohibition 9



Acting with Knowledge...

- You may not proceed with transactions with knowledge that a violation has occurred or is about to occur.
- Relates to any item subject to the EAR – on the CCL or EAR99
- Exports, reexports, activities, e.g., financing, transferring, transporting, forwarding

General Prohibition 10



Summary: Other Licensing Requirements

- Licensing requirements based on knowledge of the end-use/end-user, parties to the transaction, activities and destinations
- Various lists published by BIS, and other USG agencies; “Know Your Customer” and “Red Flags” guidance
- Policies for each embargoed country differ, but in most cases, even exports of EAR99 items require a license
- General Prohibitions 4-10